

Court of Appeals, State of Michigan

ORDER

People of MI v Guadalupe Romo

Docket No. 308306

LC No. 11-009346-FC

Cynthia Diane Stephens
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the December 14, 2011, order of the Wayne Circuit Court granting defendant's motion to quash the information hereby is REVERSED. The evidence at the preliminary examination supported the district court's bindover of defendant on the count of second-degree murder. The record before this Court reflects that the prosecution presented evidence that defendant had the intent to act "in obvious disregard of life-endangering consequences." *People v Goecke*, 457 Mich 442, 466; 579 NW2d 868 (1998). Defendant chose to drive 70 mph into the flooded underpass, where the minivan was traveling at slow speed. Defendant did not apply his brakes until seconds before the impact with the minivan. The evidence does not reflect that he attempted to swerve to avoid the impact or that he was unfamiliar with the road. Defendant refused to take a sobriety test after the accident. He was driving on a suspended license. He drove after drinking despite the fact that he already had two prior convictions for operating a vehicle while intoxicated. His level of intoxication was more than twice the legal limit. These facts supported a finding that defendant had a willful disregard of the likelihood that the natural tendency of his behavior would cause death or great bodily harm. See *id.*

The case is remanded to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.

Judge Stephens concurs in the result. However, neither the decision to exercise his right to refuse a breathalyzer nor his licensure status at the time of the offense are indicia of his intent at the time of the charged offense.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

APR 24 2012

Date


Chief Clerk